STATE OF MICHIGAN

COURT OF APPEALS

MARGARET ANN BROOKS,

Plaintiff-Appellee,

v

MICHIGAN DEPARTMENT OF TRANSPORTATION,

Defendant-Appellant.

UNPUBLISHED
March 13, 2003

No. 232521
Court of Claims
LC No. 00-017688-CM

MARCIA RAULI, Personal Representative of the Estate of WILLIAM J. RAULI, JR., Deceased, and MARCIA RAULI, Conservator of WILLIAM J. RAULI, III, a Minor,

Plaintiffs-Appellees,

v

GEORGE VINCENT RIGAUD, JR. and CHEM LEAMAN TANK LINES,

Defendants,

and

MICHIGAN DEPARTMENT OF TRANSPORTATION,

Defendant-Appellant.

No. 232750
St. Clair Circuit Court
LC No. 00-000101-NO

HARLAN C. McCANN, Personal Representative of the Estate of DEBORAH MARIE McCANN, Deceased,

Plaintiff-Appellee,

v

No. 234213
Wayne Circuit Court
LC No. 99-930047

MICHIGAN DEPARTMENT OF TRANSPORTATION,

Defendant-Appellant,

and

GARTER BELT, INC., a/k/a LEGGS CLUB, a/k/a LEGGS LOUNGE, and BENNETT RUSSELL SMITH,

Defendants.

DOUGLAS SAWICKI and PHYLIS A. SAWICKI,

Plaintiffs-Appellees,

v

No. 235509
Court of Claims
LC No. 00-017695-CM

MICHIGAN DEPARTMENT OF TRANSPORTATION,

Defendant-Appellant.

Before: Donofrio, P.J., and Saad and Owens, JJ.

PER CURIAM.

I.

Facts and Procedural History

In each of these consolidated cases, the defendant, the Michigan Department of Transportation (MDOT) appeals[1] the trial court's order which denied MDOT's motion for summary disposition. Because the trial court erred as a matter of law, we reverse the trial court's decision in all four cases.

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[1] Appeal is by leave granted.

In each of these personal injury suits, plaintiffs alleged that a defect in the design of the roadway resulted in injury or death and plaintiffs sought recovery for their injuries from MDOT. In Docket No. 232521, plaintiff asserted that the design of the left turn lanes was defective; in Docket No. 232750, plaintiffs claimed that the sight distance was too short from the top of an overpass to an exit ramp where traffic turned on to the road; in Docket No. 234213, plaintiff said that the sight distance for a crossroad was inadequate; and in Docket No. 235509, plaintiffs maintained that the narrow width of the shoulder on a sharp curve constituted a failure to maintain or repair the roadway.

In each case, MDOT moved for summary disposition and maintained that plaintiffs' claims were barred by governmental immunity because plaintiffs' claims of design defects and inadequate signage do not fall within the applicable highway exception to governmental immunity. The trial court denied the motion in each case, on the grounds that the highway exception encompassed design defect claims because Michigan Supreme Court precedent to the contrary does not apply retrospectively. Because the trial judge ruled incorrectly, as a matter of law, we reverse.[2]

II. Analysis

A. Claims of Design Defect Are Not Covered by the Highway Exception to Governmental Immunity

Although a governmental agency is generally immune from tort liability for actions taken in furtherance of a governmental function,[3] an agency having jurisdiction over a highway is subject to liability if it breaches its duty to "maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel."[4] Our case law makes clear that the grant of governmental immunity must be construed broadly and that this exception, like other exceptions to governmental immunity, is to be narrowly construed. *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 158; 615 NW2d 702 (2000).

MCL 691.1402 imposes duties and liability on state and county road commissions only for the improved portion of the highway. *Id.*

> We are not persuaded that the highway exception contemplates "conditions" arising from "point[s] of hazard," "areas of special danger," or "integral parts of the highway," outside the actual roadbed, paved or unpaved, designed for vehicular travel. None of these phrases or concepts appears anywhere within the provisions of the highway exception. To continue to rely upon these phrases in determining the scope of the highway exception is contrary to the language selected by the Legislature in creating this exception. [*Nawrocki, supra*, 463 Mich at 176-177.]

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[2] We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

[3] MCL 691.1407

[4] MCL 691.1402(1)

In *Nawrocki*, and its companion case, *Evens v Shiawassee Co Rd Comm*, our Supreme Court held that the highway exception does not contemplate conditions arising from points of hazard or special dangers outside the actual roadbed designed for vehicular travel. See *id*. at 179-184. In *Hanson v Mecosta Co Rd Comm'rs*, 465 Mich 492, 502-504; 638 NW2d 396 (2002), our Supreme Court further held that state and county road commissions have no duty, under the highway exception, to improve upon or correct defects arising from the original design of a roadway and no duty to redesign a roadway:

> We agree with the Court of Appeals majority and hold that the road commission's duty under the highway exception does not include a duty to design, or to correct defects arising from the original design or construction of highways. In the highway exception, the Legislature has said that the duty of the road commission is to "*maintain* the highway in reasonable repair so that it is reasonably safe and convenient for public travel." The statute further provides that the specific duty of the state and county road commissions is to "*repair and maintain*" highways. "Maintain" and "repair" are not technical legal terms. In common usage, "maintain" means "to keep in a state of repair, efficiency, or validity: preserve from failure or decline." *Webster's Third New International Dictionay*, Unabridged Edition (1966), p 1362. Similarly, "repair" means "to restore to a good or sound condition after decay or damage; mend." *Random House Webster's College Dictionary* (2000), p 1119. We find persuasive the analysis of *Wechler v Wayne Co Rd Comm*, 215, Mich App 579, 587-588; 546 NW2d 690 (1966) that
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> > [t]he Legislature thus did not purport to demand of governmental agencies having jurisdiction of highways that they improve or enhance existing highways, as by widening existing lanes or banking existing curves; that they augment existing highways, as by adding left-turn lanes; or that existing highways be expanded, as by adding new travel lanes or extending a highway into new territory. The only statutory requirement and the only mandate that, if ignored, can form the basis for tort liability is to "maintain" the highway in reasonable repair.
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> > Thus,. . . highway authorities are under no statutory obligation to reconstruct a highway whenever some technological safety advancement has been developed. Rather, the focus of the highway exception is on maintaining what has already been built in a state of reasonable repair so as to be reasonably safe and fit for public vehicular travel.
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> The plain language of the highway exception to governmental immunity provides that the road commission has a duty to repair and maintain, not a duty to design or redesign. [*Hanson v Mecosta Co Rd Comm'rs*, 465 Mich at 502-503 (2002).]

Accordingly, if our Supreme Court's holding in *Hanson* applies to these claims which arose before our Supreme Court issued its ruling in *Hanson*, then plaintiffs' claims must be dismissed.

B. *Nawrocki* and *Hanson* Apply Retroactively

As we held in *Adams v Department of Transportation*, judicial decisions are generally given full retroactive effect:

> Generally, judicial decisions are given full retroactive effect. *Pohutski v Allen Park*, 465 Mich 675, 696; 641 NW2d 219 (2002), citing *Hyde v Univ of Michigan Bd of Regents*, 426 Mich 223, 240; 393 NW2d 847 (1986). In determining whether a decision is to be applied only prospectively, a reviewing court must consider whether the decision clearly established a new principle of law, which results from overruling case law that was clear and uncontradicted. *Pohutski, supra* at 696, citing *Riley v Northland Geriatric Center (After Remand)*, 431 Mich 632, 645-646; 433 NW2d 787 (1988) (Griffin, J.). See *MEEMIC v Morris*, 460 Mich 180, 189; 596 NW2d 142 (1999), quoting *Hyde, supra* at 240 ("[C]omplete prospective application has generally been limited to decisions which overrule clear and uncontradicted case law."). If a reviewing court concludes that the decision does not overrule clear and uncontradicted case law, the product of which is a new principle of law, the decision must be applied retroactively. [*Adams v Dep't of Trans*, 253 Mich App, 435 (2002).]

Plaintiffs contend that *Nawrocki* overturned clear and uncontradicted case law, and, thus, should be given prospective effect only. However, we specifically rejected that argument in *Adams v Dep't of Transportation*, 253 Mich App 431, 440; ___ NW2d ___ (2002). In Adams, our Court thoroughly analyzed and rejected plaintiffs' specific contention regarding retroactivity. *Hanson*, which simply applies *Nawrocki* to these specific facts, likewise applies retrospectively.

Accordingly, plaintiffs' claims of defective design fail to plead facts in avoidance of governmental immunity under *Nawrocki* and *Hanson*. Plaintiffs have not stated claims upon which relief can be granted. Summary disposition was improperly denied, and we reverse, and remand to the trial court which shall enter an order of summary judgment for defendant in these four cases. We do not retain jurisdiction.

Reversed and remanded.

/s/ Pat M. Donofrio
/s/ Henry William Saad
/s/ Donald S. Owens